IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 730 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT S GAIWALA
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
NOTICE SERVED for Applicant.
MR PRADIP BHATE, APP for Respondent No. 1.
NOTICE SERVED for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 22/02/2006

ORAL JUDGMENT

Though served, the applicant has not appeared before the Court nor he has engaged any advocate to represent his case. This matter is pending before the Court since 1995.

By filing this application, the applicant has prayed that criminal

complaint registered as C.R.No.46/1994 and Criminal Case No.3589/1988 may be quashed. Aforesaid complaint is filed by respondent No.2 against the applicant on the ground that even though the applicant ceases to be the employee of the company, he has not vacated the quarter of the company. As per the averments made in paragraph 6 of the application, learned Magistrate has issued arrest warrant against the applicant against which the applicant has preferred Criminal Misc. Application No.4010/1994, which was withdrawn from this Court with a liberty to approach the learned Magistrate.

As per the averments made in the application, learned Magistrate has not decided the application preferred by the applicant and it is prayed that complaint filed by the company may be quashed, as the applicant had no intention to retain the quarter but because of reasons beyond his control, the applicant could not vacate the quarter.

In my view, when the matter is pending before the Magistrate, the Magistrate shall take all these aspects into consideration and decide the matter in accordance with law. Considering the fact that though served, the applicant has not appeared before the Court, it is presumed that he is not interested in proceeding further with this case. Whatever the defence available to the applicant he can take the same in a pending trial before the Magistrate and the Magistrate shall decide the case in accordance with law after considering the submissions of the applicant.

Subject to what is stated herein above, this application is rejected. Rule is discharged.

(P.B.MAJMUDAR, J.)

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